

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTINE JANE NAKONECZNY,

Defendant-Appellant.

UNPUBLISHED

February 16, 1999

No. 202959

Presque Isle Circuit Court

LC No. 95-091507 FH

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

MEMORANDUM.

Defendant appeals by right a new judgment of sentence entered following a remand for resentencing previously ordered by this Court in *People v Nakoneczny*, unpublished opinion per curiam of the Court of Appeals, issued February 14, 1997 (Docket No. 195710). We affirm.

On appeal, defendant contends that her sentence of thirty-two to forty-eight months' imprisonment, the maximum sentence allowed for the underlying offense according to the two-thirds rule of *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972), is disproportionate to the seriousness of her probation violations, and that the case should be remanded to the trial court for an articulation of its reasons for deviating from the original guidelines sentence range of zero to six months. We disagree.

The sentencing guidelines do not apply to probation violators and therefore cannot be used in any manner for determining whether a defendant's probation violation sentence is proportionate. *People v Williams*, 223 Mich App 409, 413; 566 NW2d 469 (1997). Cf. *People v Cervantes*, 448 Mich 620, 625-626; 532 NW2d 831 (1995). Given the circumstances of the underlying offense of second-degree child abuse, MCL 750.136b(3); MSA 28.331(2)(3), as well as defendant's post-conviction conduct, we are persuaded that defendant's sentence is proportionate to the offense and the offender.

Defendant also challenges the trial court's probation violation determination regarding defendant's failure to complete substance abuse counseling. However, that matter is beyond the scope of this appeal, which is limited to resentencing issues. *People v Jones*, 393 Mich 434, 435-436; 321

NW2d 649 (1975); *People v Gauntlett*, 152 Mich App 397, 400; 394 NW2d 437 (1986), lv den 426 Mich 873 (1986).

If considered, we would decline to reach a decision contrary to the trial court since there was ample evidence from a number of different counselors involved in defendant's case, indicating that defendant was deliberately uncooperative and resistant to therapy.

Affirmed.

/s/ William B. Murphy

/s/ Barbara B. MacKenzie

/s/ Michael J. Talbot